

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
Richmond Division

In Re: James B. Beverly, Jr.,
Debtor.

Case No. 13-32246-DOT
Chapter 13 Proceeding

CITIZENS BANK AND TRUST COMPANY,)
)
Plaintiff,)
)
v.)
)
JAMES B. BEVERLY, JR.,)
and)
ROBERT E. HYMAN, Trustee,)
)
Defendants.)

**NOTICE OF AND MOTION FOR RELIEF FROM
THE AUTOMATIC STAY OF 11 U.S.C. § 362 AND NOTICE OF HEARING**

Citizens Bank and Trust Company ("CB&T") has filed papers with the Court to seek relief from the automatic stay.

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.)

If you do not want the Court to grant the relief sought in this motion, or if you want the Court to consider your views on the motion, then within fourteen (14) days from the date of service of this motion, you must file a written response explaining your position with the Court at the following address:

File with the Court an answer, explaining your position at:

William C. Redden, Clerk
U.S. Bankruptcy Court
Eastern District of Virginia
Richmond Division
701 East Broad Street, Suite 4000
Richmond, VA 23219

Robert H. Chappell, III, Esquire (VSB #31698)
Jennifer J. West, Esquire (VSB #47522)
James K. Donaldson, Esquire (VSB #80307)
Spotts Fain PC
411 East Franklin Street, Suite 600
Richmond, Virginia 23219
Phone: (804) 697-2000 Fax: (804) 697-2100
Counsel for Citizens Bank and Trust Company

If you mail your request or response to the Court for filing, you should mail it early enough so the Court will receive it on or before the date stated above.

You must also mail a copy to

Jennifer J. West, Esquire
Spotts Fain PC
411 East Franklin Street, Suite 600
Richmond, Virginia 23219

and to

Robert E. Hyman, Trustee
P.O. Box 1780
Richmond, VA 23218

You must attend a hearing to be held on **September 11, 2013 at 11:00 a.m.** in Judge Tice's Courtroom, United States Bankruptcy Court, U.S. Courthouse, 701 E. Broad Street, Room 5100, Richmond, Virginia 23219.

If you or your attorney do not take these steps, the Court may decide that you do not oppose the relief sought in the Motion and may enter an Order granting that relief.

MOTION FOR RELIEF FROM STAY

CB&T submits the following Motion for Relief from the Automatic Stay of 11 U.S.C. § 362, requesting the Court permit CB&T to enforce its remedies under its security instruments and state law, including the right to foreclose upon and sell certain property owned by the Debtor, as defined herein, or enter an order granting it adequate protection of its security interest. In support of this Motion, CB&T states the following:

1. Jurisdiction is conferred upon this Court pursuant to 28 U.S.C. § 1334. This matter is a "core" proceeding as set forth under 28 U.S.C. § 157.
2. On April 23, 2013 (the "Petition Date"), James B. Beverly, Jr. (the "Debtor") filed a petition under Chapter 13 of Title 11 of the United States Code.
3. On April 24, 2013, the Court appointed Robert E. Hyman as Interim Trustee and Mr. Hyman continues to serve as the Trustee for the Bankruptcy Estate of the Debtor.

4. On or about April 12, 2013, the Debtor executed a Promissory Note (the "Note") in the original principal amount of \$105,000.00 payable to CB&T. CB&T is the holder of the Note. A copy of the Note is attached hereto as Exhibit 1.

5. The Note is secured by a Credit Line Deed of Trust dated April 12, 2013, and recorded in the Clerk's Office, Circuit Court of Nottoway County, Virginia at Instrument #130000526, on April 22, 2013 (the "Deed of Trust"). The Deed of Trust was executed by the Debtor and encumbers a parcel of real estate owned by him in Nottoway County, Virginia described as and known hereafter as 208 Cauthorne Street, Burkeville, Virginia 23922 (the "Property") and more particularly described below. A copy of the Deed of Trust is attached hereto as Exhibit 2.

6. The legal description of the Property is:

ALL THAT CERTAIN TRACT OF LAND LYING IN THE TOWN OF BURKEVILLE, NOTTOWAY COUNTY, VIRGINIA, FRONTING APPROXIMATELY 185 FEET ON CAUTHORNE STREET AND RUNNING BACK BETWEEN PARALLEL LINES APPROXIMATELY 200 FEET IN LENGTH TO LAND NOW OR FORMERLY OWNED BY THE GRANITE QUARRY; BOUNDED ON THE SOUTHWEST BY CAUTHORNE STREET; ON THE NORTHWEST BY LANDS FORMERLY OF ELIZA TUCKER'S ESTATE AND LUCY AND CLARENCE JETER; ON THE NORTHEAST BY THE GRANITE QUARRY; AND ON THE SOUTHEAST BY LANDS FORMERLY OF J. H. WALTON AND RICHARD LINDSEY.

THIS IS PART OF THE 1.7 ACRE PARCEL CONVEYED UNTO AMANDA ROWE BY DEED IN DEED BOOK 5, PAGE 319 AND SOLD BY DECREE IN A SUIT IN EQUITY BEING ENDED CHANCERY CAUSE NO. 1549; REFERENCE BEING MADE TO SAID FILE AND IN PARTICULAR TO THE REPORT OF THE COMMISSIONER UNDER A DECREE OF REFERENCE, THE LAST THREE PAGES OF WHICH ARE ATTACHED AS EXHIBIT "B" WHEREBY THE COMMISSIONER UNDERTAKES TO RECITE THE OFF CONVEYANCES BY AMANDA ROWE FROM THE 1.7 ACRES AND TO SHOW BY A DRAWING THE REMAINING

TRACT SOLD TO GOLDBUD AND ADDIE TWEEDY BEVERLY BY DEED OF SPECIAL COMMISSIONER RECORDED IN DEED BOOK 85, PAGE 14. SEE ALSO THE DEED AT DEED BOOK 176, PAGE 37, WHICH SHOWS A TAKE OF LAND BY THE HIGHWAY DEPARTMENT COMING OFF OF THIS TRACT AND SEE STATE HIGHWAY PLAT BOOK 2, PAGE 71, FOR A FURTHER DESCRIPTION OF THE REAL PROPERTY.

BEING THE SAME REAL ESTATE CONVEYED TO JAMES 8. BEVERLY, JR., BY DEED FROM HUNTER AUSTIN, RICHARD AUSTIN AND ELOISE AUSTIN, DATED APRIL 11, 2000, RECORDED APRIL 24, 2000, IN THE CLERK'S OFFICE, CIRCUIT COURT, NOTTOWAY COUNTY, VIRGINIA, IN DEED BOOK 326, PAGE 420.

7. CB&T is a secured creditor of the Debtor with a payoff of \$106,810.98 as of July 22, 2013.

8. The Debtor's Chapter 13 Plan was confirmed on June 14, 2013 and provides that the Debtor will make regular contract payments directly to CB&T and arrears, if any, will be paid to CB&T by the Trustee.

9. As of July 22, 2013, the Note was delinquent for post-petition payments due to CB&T for the months of May 2013 through July 2013 in the total amount of \$2,098.46, which includes late charges of \$67.70.

10. The interests of CB&T in the Property are not adequately protected constituting cause for granting relief from the automatic stay of 11 U.S.C. § 362(d)(1).

11. CB&T requests that the fourteen-day period under Rule 4001(a)(3) of the Federal Rules of Bankruptcy Procedure during which the stay remains in effect be waived and any Order granting relief shall become effective immediately upon entry.

WHEREFORE, Citizens Bank and Trust Company respectfully requests that this Court enter an Order granting Citizens Bank and Trust Company relief from the automatic stay of 11

U.S.C. § 362 as to the Property, allowing Citizens Bank and Trust Company to enforce its remedies under the Note, the Deed of Trust and under state law, including the right to foreclose upon the Property and that the fourteen-day period under Rule 4001(a)(3) of the Federal Rules of Bankruptcy Procedure during which the stay remains in effect be waived and that any Order granting relief shall become effective immediately upon entry or otherwise granting it adequate protection of its security interest, and that it have such other and further relief as the Court may deem appropriate.

CITIZENS BANK AND TRUST COMPANY

By: /s/ Jennifer J. West
Counsel

Robert H. Chappell, III, Esquire (VSB #31698)
Jennifer J. West, Esquire (VSB #47522)
James K. Donaldson, Esquire (VSB #80307)
Spotts Fain PC
411 East Franklin Street, Suite 600
Richmond, Virginia 23219
Phone: (804) 697-2000
Fax: (804) 697-2100
Counsel for Citizens Bank and Trust Company

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Notice of and Motion for Relief from Automatic Stay and Notice of Hearing was sent via U.S. Mail, postage prepaid, and/or delivered by electronic means, this 24th day of July, 2013 to the following, constituting all necessary parties:

James B. Beverly, Jr.
P.O. Box 522
Burkeville, VA 23922

Joseph S. Massie, III, Esquire
Massie Law Firm, P.C.
102 East Cary Street
Richmond, VA 23219

Robert E. Hyman, Trustee
P.O. Box 1780
Richmond, VA 23218

/s/ Jennifer J. West

SPECIAL NOTICE

THE FOLLOWING NOTICE IS GIVEN TO YOU IN THE EVENT THAT THE FAIR DEBT COLLECTION PRACTICES ACT (15 U.S.C. 1692 *et seq*) APPLIES TO THIS COMMUNICATION.

THIS IS AN ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE. THIS COMMUNICATION IS FROM A DEBT COLLECTOR.